

AMENDED IN SENATE AUGUST 28, 1998
AMENDED IN SENATE AUGUST 20, 1998
AMENDED IN SENATE JULY 23, 1998
AMENDED IN SENATE JULY 14, 1998
AMENDED IN ASSEMBLY APRIL 30, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2687

Introduced by Assembly Member Gallegos

February 23, 1998

An act to add Section 11352.1 to, and to add and repeal Section 101070 of, the Health and Safety Code, relating to healing arts, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2687, as amended, Gallegos. Healing arts: dispensing drugs.

Existing law authorizes the California State Board of Pharmacy to take action against all persons guilty of violating the Pharmacy Law. That law prohibits the sale of specified drugs without a prescription by a licensed practitioner and dispensed by a person licensed to dispense prescription drugs.

This bill would authorize a local health officer who determines that a person within his or her jurisdiction is unlawfully dispensing or furnishing specified drugs requiring a prescription, or a dangerous drug or device, or a controlled

drug, to take a specified action, including receiving and investigating complaints from the public, other licensees or health care facilities, issue an order to the person to immediately cease and desist from the unlawful activity, and ordering the closure of the business operated, managed, or owned by that person. The bill would also authorize a local health officer to order the immediate closure of a business upon reasonable suspicion that the business poses an immediate threat to public health, welfare, or safety, as defined. The bill would require that any person whose business is closed as a result of local health officer action under this act is entitled to be given notice and a hearing on why closure is unwarranted.

Existing law makes it a misdemeanor for any unlicensed person to knowingly dispense dangerous drugs or dangerous devices, as defined, punishable by a fine of not less than \$200 and not more than \$2,000 or by imprisonment of not less than 30 days and not exceeding 6 months, or by both that fine and imprisonment.

This bill would make it a misdemeanor for any unlicensed person to knowingly dispense or furnish a dangerous drug or dangerous device, or to knowingly own, manage, or operate a business that dispenses or furnishes a dangerous drug or dangerous device, when that business is not licensed to dispense or furnish such products. Upon conviction, each violation would be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that fine and imprisonment. Upon a 2nd or subsequent conviction, each violation would be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11352.1 is added to the Health
2 and Safety Code, to read:

3 11352.1. (a) The Legislature hereby declares that the
4 dispensing and furnishing of prescription drugs,
5 controlled substances, and dangerous drugs or dangerous
6 devices without a license poses a significant threat to the
7 health, safety, and welfare of all persons residing in the
8 state. It is the intent of the Legislature in enacting this
9 provision to enhance the penalties attached to this illicit
10 and dangerous conduct.

11 (b) Notwithstanding Section 4321 of the Business and
12 Professions Code, and in addition to any other penalties
13 provided by law, any person who knowingly and
14 unlawfully dispenses or furnishes a dangerous drug or
15 dangerous device, as defined in Section 4022 of the
16 Business and Professions Code, or who knowingly owns,
17 manages, or operates a business that dispenses or
18 furnishes a dangerous drug or dangerous device as
19 defined in Section 4022 of the Business and Professions
20 Code without a license to dispense or furnish these
21 products, shall be guilty of a misdemeanor. Upon the first
22 conviction, each violation shall be punishable by
23 imprisonment in a county jail not to exceed one year, or
24 by a fine not to exceed five thousand dollars (\$5,000), or
25 by both that fine and imprisonment. Upon a second or
26 subsequent conviction, each violation shall be punishable
27 by imprisonment in a county jail not to exceed one year,
28 or by a fine not to exceed ten thousand dollars (\$10,000),
29 or by both that fine and imprisonment.

30 SEC. 2. Section 101070 is added to the Health and
31 Safety Code, to read:

32 101070. (a) (1) The Legislature hereby finds and
33 declares that the dispensing or furnishing of drugs

1 requiring a prescription pursuant to Section 11470, a
2 controlled substance as defined in Section 4021 of the
3 Business and Professions Code, or a dangerous drug or a
4 dangerous device as defined in Section 4022 of the
5 Business and Professions Code, without a license poses a
6 significant threat to the public health, safety, and welfare
7 of all residents of the state. In recent years, the public has
8 become increasingly exposed to a proliferation of persons
9 who engage in these illegal or dangerous acts.

10 (2) The Legislature further finds and declares that
11 extraordinary measures are needed to control this
12 burgeoning problem. Therefore, the occasional
13 enlistment of local health officers in regulatory and
14 enforcement functions normally reserved to the state is
15 appropriate and necessary in order to protect the health,
16 safety, and welfare of all persons of this state.

17 (3) Notwithstanding the foregoing, nothing contained
18 in this section shall be construed as limiting or
19 supplanting the authority of the state agencies charged
20 with the regulation of the practice of pharmacy.

21 (b) Whenever a local health officer determines that
22 there exists in his or her jurisdiction any person who,
23 without a license, is dispensing or furnishing drugs
24 requiring a prescription pursuant to Section 11470, a
25 controlled substance as defined in Section 4021 of the
26 Business and Professions Code, or a dangerous drug or a
27 dangerous device as defined in Section 4022 of the
28 Business and Professions Code, the local health officer
29 may take action against such person. This action shall
30 include, but not be limited to:

31 (1) Receiving and investigating complaints from the
32 public, from other licensees or from health care facilities
33 that a person is engaging in any or all of the activity set
34 forth in this subdivision. In conducting any investigation
35 pursuant to this paragraph, the local health officer shall
36 have the assistance of, and be accompanied by, a licensed
37 pharmacist. The local health officer shall provide the
38 Board of Pharmacy, and any other state agency charged
39 with jurisdiction over the activity set forth in this

1 subdivision, with a copy of all complaints received
2 pursuant to this paragraph.

3 (2) Issuing an order to the person to immediately
4 cease and desist from the unlawful activity described in
5 this subdivision, after confirming that the person is
6 engaging in any or all of the activity set forth in this
7 subdivision, and determining that the person has not
8 been convicted of engaging in that activity pursuant to
9 Section 11352.1 or any other applicable provision of law.
10 In issuing the order, the local health officer shall notify the
11 person that the activity is illegal in the State of California.
12 In the event the local health officer determines that any
13 or all of the items described in this subdivision must be
14 confiscated, in addition to the cease and desist order, the
15 local health officer shall enlist the aid of local law
16 enforcement to execute confiscation of those items.

17 (3) Order the closure of the business, if any, operated,
18 managed, or owned by the person after confirming that
19 the person is engaging in any or all of the activity set forth
20 in this subdivision, and determining whether the person
21 has previously been convicted of engaging in that activity
22 pursuant to Section 11352.1 or any other applicable
23 provision of law. If the public health officer has a
24 reasonable suspicion that the operation of a business poses
25 an immediate threat to public health, welfare, or safety,
26 the business may be ordered closed immediately while
27 the hearing described in subdivision (c) is pending.
28 Immediate danger to the public health, welfare, or safety
29 includes, but is not limited to, evidence that the person
30 is providing, selling, or distributing drugs that require a
31 prescription, or dangerous drugs, devices, or controlled
32 substances without a license. In the event that the local
33 health officer determines that any or all of the items
34 described in this subdivision must be confiscated in
35 addition to the closure of the business, that officer shall
36 enlist the aid of local law enforcement to execute the
37 confiscation of those items.

38 (c) (1) Any person engaging in any or all of the
39 activity described in subdivision (b) whose business is
40 closed as a result of action by local health officer pursuant

1 to subdivision (b) shall be entitled to a hearing to show
2 cause why the closure was unwarranted.

3 (2) Whenever a local health officer orders the closure
4 of a business pursuant to subdivision (b), the local health
5 officer shall immediately issue to the owner a notice
6 setting forth the acts or omissions with which the owner
7 is charged, specifying the pertinent code section, and
8 informing the owner of the right to a hearing, if
9 requested, to show cause why the business should not be
10 closed.

11 (3) A written request for a hearing shall be submitted
12 by the person to the local health officer within 15 calendar
13 days of closure. A failure to request a hearing within 15
14 calendar days of closure shall be deemed a waiver of the
15 right to a hearing.

16 (4) The hearing shall be held within 15 calendar days
17 of the receipt of a request for a hearing; however, when
18 circumstances warrant, the hearing officer may order a
19 hearing at any reasonable time within this 15-day period
20 to expedite the hearing process. Upon written request of
21 the person, the hearing officer may postpone any hearing
22 date, if circumstances warrant the postponement.

23 (5) The hearing officer shall issue a written notice of
24 decision to the person within five working days following
25 the hearing. In the event the hearing officer determines
26 that the closure was warranted, the notice shall specify
27 the acts or omissions with which the person is charged,
28 and shall state that the business shall remain closed
29 permanently. Evidence that the person engaged in any
30 or all of the activity set forth in subdivision (b) shall
31 constitute prima facie evidence that permanent closure
32 is warranted. Any business still operating shall close
33 immediately upon receipt of the written decision
34 ordering closure.

35 (d) This section shall remain in effect only until
36 January 1, 2001, and as of that date is repealed, unless a
37 later enacted statute, that is enacted before January 1,
38 2001, deletes or extends that date.

39 SEC. 3. No reimbursement is required by this act
40 pursuant to Section 6 of Article XIII B of the California

1 Constitution because the only costs that may be incurred
2 by a local agency or school district will be incurred
3 because this act creates a new crime or infraction,
4 eliminates a crime or infraction, or changes the penalty
5 for a crime or infraction, within the meaning of Section
6 17556 of the Government Code, or changes the definition
7 of a crime within the meaning of Section 6 of Article
8 XIII B of the California Constitution.

9 Notwithstanding Section 17580 of the Government
10 Code, unless otherwise specified, the provisions of this act
11 shall become operative on the same date that the act
12 takes effect pursuant to the California Constitution.

13 *SEC. 4. This act is an urgency statute necessary for the*
14 *immediate preservation of the public peace, health, or*
15 *safety within the meaning of Article IV of the*
16 *Constitution and shall go into immediate effect. The facts*
17 *constituting the necessity are:*

18 *In order to safeguard the health and welfare of the*
19 *people of this state by providing for increased regulatory*
20 *and enforcement activities relating to the unauthorized*
21 *practice of pharmacy at the earliest possible time, it is*
22 *necessary that this act take effect immediately.*

